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OFFICE OF PETITIONS

In re Application of :
John Alan Lawton :
Application No. 10/748,850 : DECISION ON PETITION
Filed: December 31, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 102456-40307482 :
:

This is in response to the communication, filed on November 4, 2005, which is being treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application Nos. 10/301,859; 09/919,997; and 09/113,271, as set forth in the concurrently filed Application Data Sheet (ADS).

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). While a claim for priority was made to the above-noted, prior-filed nonprovisional applications in an ADS on filing, the ADS did not state the relationship (i.e., continuation, division or continuation-in-part) of the prior-filed nonprovisional applications as required by 37 CFR 1.78(a)(2)(i). Therefore, this is appropriately a petition under 37 CFR 1.78(a)(3) and has been so treated.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional applications has been included in an ADS , as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains an adequate statement of unintentional delay.

Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

As authorized, the \$1,370 fee required under 37 CFR 1.17(t) will be charged to petitioner's deposit account.

It is noted that the ADS requests that correspondence concerning this application be directed to Customer Number 43569. However, a request to change the correspondence address must be submitted by an attorney duly appointed to prosecute the application. There is no indication that Mr. Paul L. Sharer was ever given a power of attorney to prosecute the above-identified application. Accordingly, if it is desired to have correspondence directed to the above Customer Number, the appropriate power of attorney documents must be submitted. While a courtesy copy of this decision is being mailed to Mr. Sharer, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1752 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.



Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Paul L. Sharer
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Intellectual Property Group
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ATTACHMENT: Corrected Filing Receipt

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